IN THE HIGH COURT OF JUDICATURE, ANDHRA PRADESH

AT HYDERABAD

(Special Original Jurisdiction)

THURSDAY, THE FOURTEENTH DAY OF JULY
TWO THOUSAND AND FIVE

PRESENT

THE HON'BLE MR JUSTICE C.V.RAMULU

WRIT PETITION NO : 425 of 1998

Between:

Depot Manager
Kamareddy Depot , Nizamabad District.

..... PETITIONER

AND

1 S.Phushparaj
Kamareddy , Nizamabad District.
2 The Presiding Officer Labour -Court II
Hyderabad

.....RESPONDENTS

Petition under Article 226 of the constitution of India praying that in the circumstances stated in the Affidavit filed herein the High Court will be pleased to issue any appropriate writ, or order or direction particularly in the nature of Writ of Certiorari calling for the records pertaining to the award of the 2nd Respondent in ID 490/92 dated 9-7-96 and published on 7-12-96 and quash the same as being illegal, arbitrary and unjust and pass

Counsel for the Petitioner: Mr.V.T.M.Prasad (SC FOR A.P.S.R.T.C.)

Counsel for the Respondent No. 1: MR.G.VIDYASAGAR

Counsel for the Respondent No.2: G.P. FOR LABOUR

The Court made the following :

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ORDER:

This writ petition is filed by the Depot Manager, APSRTC Management, Kamareddy Depot, Nizamabad District, being aggrieved by the Award passed in I.D.No.490 of 1992 dated 9-7-1996 on the file of the Labour Court II, Hyderabad, wherein the first respondent-workman was directed to be reinstated into service with continuity of service and attendant benefits and 50% back wages.

It is the case of the petitioner-management that the first respondent was appointed as temporary cleaner with effect from 5-12-1966 and subsequently promoted a s 'Tyre Mechanic' in the year 1971. During his service with the Corporation he was imposed with number of punishments for unauthorized absenteeism and improper maintenance of tyres. He was warned three times and he was removed from service once prior to his involvement in the present case. While so, the Assistant Engineer (Mechanical) of Kamareddy Depot reported that the first respondent has absented for his duties from 16-3-1990 onwards, unauthorisedly, without any intimation or prior sanction of leave on account of which the vehicle maintenance work was affected and also caused inconvenience to the traveling public, besides loss of revenue to the Corporation. Basing on the above report, a charge sheet dated 25-4-1990 was issued framing the following charge.

> *"For having unauthorized absence for duties from 16-3-'90 to till date i.e. 25-4-90 which constitutes misconduct in terms of clause (xxvii) of Regulation 28 of APSRTC Employees' (Conduct) Regulations, 1963."*

The first respondent submitted his explanation and having not satisfied with the explanation submitted by the respondent No.1, a detailed domestic enquiry was ordered and after giving full opportunity to the respondent No.1 to defend his case, the Enquiry Officer submitted a report holding that the first respondent is guilty of the charges. On the basis of the Enquiry Officer report, the disciplinary authority issued a show cause notice proposing the punishment of removal from service. Final orders were passed on 4-1-1992.

Aggrieved by the removal orders passed by the petitioner, the first respondent raised dispute under Section 2-A(2) of the Industrial Disputes Act before the second respondent-Labour Court II, Hyderabad, which was taken up on file as I.D.No.490 of 1992. The Labour Court by its Award dated 9-7-1996 directed reinstatement of the first respondent into service with all benefits and with continuity of service but with 50% of the back wages. Hence, this writ petition.

A detailed counter affidavit has been filed by the 1st respondent-workman denying the allegations made by the petitioner and supporting the Award made by the Labour Court.

I have given my earnest consideration to the respective submissions made by the learned counsel on either side and perused the Award passed by the Labour Court and other material made available on record.

At the outset, I am of the opinion that the Labour Court has erred in exercising the powers vested in it under Section 11 (A) of the Industrial Disputes Act, while passing the Award exceeded in granting the relief than what the workman deserved in the circumstances of the case.

Before the labour court though no oral evidence was let in by both the parties, on behalf of the workman documents Exs.W.1 to W.10 were marked. On behalf of the petitioner-Management Exs.M.1 to M.13 were marked. After a detailed consideration of the documentary evidence, the Labour Court came to the conclusion that the reasoning adopted by the Enquiry Officer as well as the Disciplinary Authority in not accepting the plea of the petitioner that he performed his duty from 2-3-1990 upto 7-3-1990 at Kamareddy and thereafter, from time to time he obtained leave regularly during the period from 9-3-1990 to 15-6-1990 on different grounds. To that effect, he submitted certificate on 16-6-1990 to the Depot Manager, Kamareddy, duly forwarded by the Superintendent (M) and his further plea that he under went treatment at BHEL hospital, Hyderabad, as his wife was working as nurse as arbitrary and further stated that the documents issued by the medical officer were not counter signed by the APSRTC Medical Officer was arbitrary. The Labour Court further observed that the procedural aspect of the domestic enquiry was not vitiated by any illegality or infirmity and therefore proceeded to consider the

proportionality of the punishment of removal from service and held that the petitioner-management has not followed correctly the principles of natural justice as held in 1988 L.I.C page 834 and therefore, the removal order passed by the petitioner Management is disproportionate, harsh and not commensurate with the gravity of the charges. Therefore, passed the orders as noticed above.

I am of the considered opinion that the labour Court except saying that the reasoning adopted by the Enquiry Officer as well as the Disciplinary Authority in not accepting the plea of the first respondent was not correct, no further reasons were furnished except saying that the pleas taken by the workman cannot persuade itself to justify the action of the petitioner as proper and proportionate. May be the Labour Court was right in holding that the punishment of removal from service was harsh in the nature of the charges and the service put up by the workman with the Corporation. That itself does not mean that the first respondent was also entitled for reinstatement and further entitled for 50% of back wages and continuity of service etc.

As noticed above, the past service of the first respondent was not clean and he was punished for the similar misconduct earlier more than once, therefore, awarding of wages in a case of this nature is unwarranted. However, it is stated that in view of the interim order passed by this court, the petitioner-Management have already deposited 50% of the wages as awarded by the Labour Court and the same was withdrawn by the petitioner without furnishing any security. It seems that the workman is on the verge of retirement and if not already retired. Therefore, I am of the opinion that the award passed by the labour court needs to be modified to be read as under:

"The petitioner-management is directed to reinstate the workman into service with all attendant benefits, continuity of service, but, only with 25% of the back wages".

With the above modification, the writ petition is disposed of. No order as to costs.

C.V.RAMULU,J

14-07-2005

Stp

To

1) The Presiding Officer Labour -Court II
Hyderabad

2) Two copies to G.P. for Labour, High Court Buildings,Hydeerabad,(OUT).

3) 2 CD copies

*Form-NIC-OGS/WP{**PRASAD**}*

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